

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON

3 **ELIZABETH PETERSON,**  
4 **AMANDA CARLTON,**  
5 **REBECCA HIRSCH, MICHELE**  
6 **O'DELL, and PRASANNA**  
7 **RAMAKRISHNAN,** individually and  
8 on behalf of all others similarly  
9 situated,

10 Plaintiffs,

11 v.

12 **BSH HOME APPLIANCES**  
13 **CORPORATION,**

14 Defendant.

Case No.: \_\_\_\_\_

15 **COMPLAINT—CLASS ACTION**  
16 **(For the Purpose of Settlement)**

## **CLASS ACTION COMPLAINT**

Plaintiffs Elizabeth Peterson, Amanda Carlton, Rebecca Hirsch, Michele O'Dell, and Prasanna Ramakrishnan (collectively "Plaintiffs"), by and through undersigned counsel, individually and on behalf of all others similarly situated, bring this Class Action Complaint against BSH Home Appliances Corporation ("Defendant" or "Bosch") and in support allege, based upon personal knowledge and belief as to their own acts and based on the investigation to date of their counsel, as follows:

### **NATURE OF ACTION**

1. Bosch is one of the largest technology companies in the world. It designs, manufactures and sells of a variety of products, including premium-priced kitchen appliances such as microwaves and ovens.

2. Bosch's kitchen appliance portfolio includes multiple types of microwaves and ovens, including the Bosch 800 Series stainless steel microwave/oven combinations, which are the subject of this action. Over the course of several decades, Bosch has gained the trust of consumers, who reasonably believe that Bosch products are made with quality materials, and that the Bosch products can be used safely, as intended. The Bosch 800 Series is intended by Bosch to be installed within the walls of the kitchen.

3. During the class period Bosch offered microwave/oven combination products with Model Numbers HBL5751UC, HBL8751UC, HBLP751UC, HMC80151UC, HMC80251UC, and HMC87151UC. (hereinafter, collectively, the "Microwave/Ovens" or the "Products"). All of the Microwave/Ovens are designed, manufactured, and sold with the same or substantially similar control panels.

4. The cost of the Microwave/Ovens is more than \$2,000.00.<sup>1</sup>

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<sup>1</sup> <https://www.bosch-home.com/us/Microwave/Ovenslist/cooking-baking/wall-ovens/combination-ovens?pageNumber=1> (last visited Jan. 22, 2021).

1           5. The Microwave/Ovens all contain a defect, described in more detail *supra*,  
2 that makes them unsuitable for their intended use. More specifically, the  
3 Microwave/Ovens are defectively designed and/or manufactured such that, under  
4 normal and intended use, the display on control panels (“Control Panel”) dims or fades  
5 to the point where it becomes unreadable, as further described herein.

6           6. The Control Panel is essentially the steering wheel of the  
7 Microwave/Ovens, which cannot operate properly or safely without the Control Panel.  
8 Thus, the dimming or failure of the Control Panel renders the Microwave/Ovens  
9 unusable, as it eliminates vital features, such as the temperature display, cooking modes  
10 (i.e., broil, bake, roast or warm), clock, and timer, which allow consumers to monitor  
and control the Microwave/Ovens.

11           7. Bosch has undertaken a deliberate and willful pattern of conduct (including  
12 taking active measures) aimed at concealing the defect from its consumers, including  
13 Plaintiffs and Class Members.

14           8. At all relevant times, Bosch knew or should have known about the defect  
15 but nevertheless marketed, advertised, and sold the Microwave/Ovens without warning  
16 consumers that the Control Panel would dim or fade to the point where it would become  
unreadable and unusable.

17           9. Bosch fails to disclose the known Defect or to provide consumers with a  
18 non-defective replacement. Indeed, rather than providing consumers with new, non-  
19 defective Microwave/Ovens after their units failed as a result of the Defect, Bosch failed  
20 to adequately remedy the Defect.

21           10. Some consumers have had their display panels replaced, only to have the  
22 exact same issue recur. Those whose Control Panels were out of warranty, have faced  
costs of \$400 on average for repair or replacement.

23           11. As a direct and proximate result of Bosch’s concealment of the defect, its  
24 failure to warn customers about the Defect before their purchase, and its failure to recall

1 the Microwave/Ovens or remedy the Defect, Plaintiffs and similarly situated customers  
2 (“Class” or “Class Members”) purchased and used Bosch’s defective Microwave/Ovens  
3 when they otherwise would not have made such purchases on the same terms or at all,  
4 or would not have paid as much for the defective units.

5 12. Plaintiffs’ and putative Class Members’ Control Panels have failed (or are  
6 likely to fail) as a result of the Defect when Plaintiffs and Class Members use the  
7 Microwave/Ovens as intended, resulting in damaged units which are unusable because  
8 the faded Control Panel makes it impossible to use the product safely or as intended.

9 13. Plaintiffs and all putative Class Members’ Microwave/Ovens contain the  
10 same Defect at the point of sale and Bosch’s Microwave/Ovens cannot be used for  
11 their intended purpose of safely and properly preparing meals at home.

### 12 **PARTIES**

13 14. Plaintiff Elizabeth Peterson is a resident and citizen of Woodinville,  
14 Washington. Plaintiff Peterson owns one of the aforementioned Microwave/Ovens at-  
15 issue, and said Product is rendered useless due to the Control Panel Defect.

16 15. Plaintiff Amanda Carlton is a resident and citizen of Monument, Colorado.  
17 Plaintiff Carlton owns one of the aforementioned Microwave/Ovens at-issue, and said  
18 Product is rendered useless due to the Control Panel Defect.

19 16. Plaintiff Rebecca Hirsch is a resident and citizen of San Ramon, California.  
20 Plaintiff Hirsch owns one of the aforementioned Microwave/Ovens at-issue, and said  
21 Product is rendered useless due to the Control Panel Defect.

22 17. Plaintiff Michele O’Dell is a resident and citizen of Cocoa Beach, Florida.  
23 Plaintiff O’Dell owns one of the aforementioned Microwave/Ovens at-issue, and said  
24 Product is rendered useless due to the Control Panel defect.

1           18. Plaintiff Prasanna Ramakrishnan is a resident and citizen of Lake Zurich,  
2 Illinois. Plaintiff Ramakrishnan owns one of the aforementioned Microwave/Ovens at-  
3 issue, and said Product is rendered useless due to the Control Panel defect.

4           19. Defendant BSH Home Appliances Corporation is a Delaware corporation  
5 with its principal place of business and headquarters located in Irvine, Orange County,  
6 California.

7           20. Bosch distributes and markets and directs the marketing of the kitchen  
8 appliances, including the aforementioned Microwave/Ovens, in Washington and  
9 throughout the United States.

### 10                                   **JURISDICTION AND VENUE**

11           21. This Court has subject matter jurisdiction over this action under the Class  
12 Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d) because: (1) there are one hundred  
13 or more (named and unnamed) Class Members, (2) there is an aggregate amount in  
14 controversy exceeding \$5,000,000, exclusive of interest and costs, and (3) there is  
15 minimal diversity because at least one Plaintiff and Defendant are citizens of different  
16 States. This Court also has supplemental jurisdiction over the state law claims pursuant  
17 to 28 U.S.C. § 1367.

18           22. This Court may exercise personal jurisdiction over Defendant because  
19 Defendant does substantial business in this State and within this District, receives  
20 substantial compensation and profits from the marketing, distribution, and sales of  
21 products in this District, and has engaged in the unlawful practices described in this  
22 Complaint in this District.

23           23. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a  
24 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in  
this District.

24. This document is being filed for the purpose of settlement, and, upon information and belief, Defendant does not oppose jurisdiction with regard to the Plaintiffs who are not residents of the state of Washington. Further, by filing this Complaint, Plaintiffs do not waive any right to allege different or alternative claims or allegations should the litigation proceed for any reason.

## COMMON FACTUAL ALLEGATIONS

## The Microwave/Ovens

25. Consumers rely upon manufacturers, including Bosch, to ensure that the Microwave/Ovens are safe, efficient, and function as intended.

26. Bosch was founded in Stuttgart, Germany in 1886, and by 1929 had more than 10,000 employees and operated worldwide in the motor vehicle and industrial technology.<sup>2</sup> Following the Great Depression, Bosch sought to explore new business areas, including “affordable electric home appliances, which had previously only been found in large households and commercial operations.”<sup>3</sup> Today, Bosch advertises its products as being “[b]y your side – today, tomorrow, and beyond. Our home appliances. We can’t simply cancel your daily routines for you. But we can shorten them for you. With our home appliances, we represent uncompromising quality, technical perfection, and absolute reliability. Yesterday, today, and in [the] future.”<sup>4</sup>

<sup>2</sup> <https://www.bosch-home.com/us/experience-bosch/history> (last accessed on Dec. 30, 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

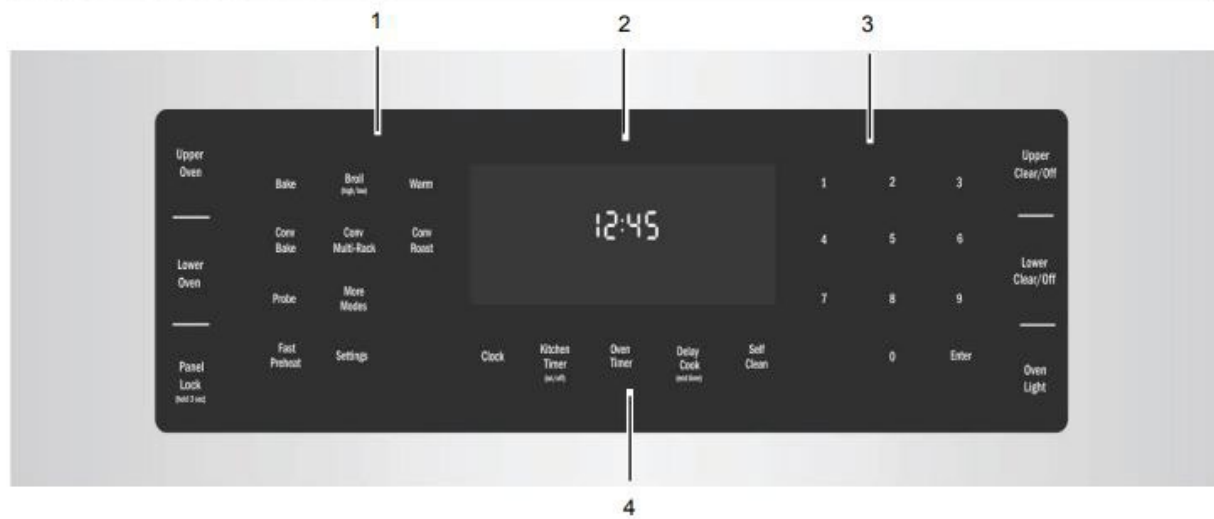
1           27. Each of the appliances Bosch makes, including the Microwave/Ovens in  
2 question, are branded with the “Bosch” logo or, upon information and belief, can  
3 otherwise be readily identified as being a Bosch product.<sup>5</sup>

4           28. Each of the Bosch-branded Microwave/Ovens contains a Defect that  
5 prevents proper use of the Product due to the inability to use the vital Control Panel.  
6 More specifically, lighting that illuminates the Control Panel fades over time and renders  
7 the Product unusable. This obstruction or disturbance prevents consumers from being  
8 able to use the Product.

9           29. The interface for the Microwave/Ovens is digital; there are no knobs with  
10 markings for temperature, and there is no non-digital display for the clock/timer/cook  
11 settings/temperature settings. Consumers use the Microwave/Ovens primarily through  
12 inputs to the Control Panel, and those inputs are reflected in the digital display that  
13 forms part of the Control Panel. The Control Panel and the display are critical to the  
14 use and safety of the Microwave/Ovens, which is why Bosch, and every other  
15 manufacturer of microwave/ovens, uses a display that tells consumers what the  
16 microwave/oven is doing at any given time. Cooking requires entering a temperature  
17 using the Control Panel. The Microwave/Ovens contain numerous cooking modes that  
18 must be entered using the Control Panel, including bake, broil, warm, roast, Sabbath,  
19 proof dough, and “fast preheat.” A proper functioning Control Panel is further vital as  
20 the timer function, the clock function, and the selection of the top or bottom unit for  
21 cooking must be made through the Control Panel. The Bosch Series 800 Control Panel  
22 for the combination microwave/oven is presented as follows in the Use and Care  
23 Manual:

24 <sup>5</sup>[https://www.bosch-home.com/us/productslist/cooking-baking/wall-ovens/combination-ovens?f\\_brand\\_value\\_class\\_ma=brand\\_value\\_class\\_bvc\\_800s](https://www.bosch-home.com/us/productslist/cooking-baking/wall-ovens/combination-ovens?f_brand_value_class_ma=brand_value_class_bvc_800s).

800 Series Double Oven Control Panel



The Series 800 single oven Control Panel contains no upper/lower oven buttons but is otherwise the same.

30. Without a functioning display, the Microwave/Ovens become useless and/or dangerous. Operating the Microwave/Ovens without being able to see the temperature, or the cooking time or mode undermines a consumer's ability to use the products to properly cook food, and is unsafe. Cooking using the Microwave/Ovens without a working display is akin to driving a car without a speedometer or other gauges that tell the driver critically important information.

### The Defect

31. The Microwave/Oven Control Panels were designed and manufactured with a vacuum fluorescent display (VFD). Liquid crystal displays have almost entirely replaced VFD's in household appliances as they are more reliable and easier to use from an electrical standpoint.

32. The VFD utilizes filaments to conduct electrical current that cause the display characters to glow, showing time, temperature, and other indicators in the Control Panels.



1           33. The voltage for the display is generated by part of the power supply circuit.  
2 That voltage energizes the display filaments. The resulting filament current causes the  
3 display to illuminate and become visible.

4           34. Industry standards applicable to this type of lighting and display system  
5 dictate that the current (in Amperes) should be controlled, but not the voltage.  
6 Decreased display life can be expected if the filament current is not properly regulated.

7           35. However, the Control Panels contain a defect in that the display system  
8 wherein the voltage, rather than the current is controlled. This causes the display of the  
9 Control Panels to burn out in an accelerated manner, leading to the display fading  
beyond any use (“the Defect”).

10           36. Following years of complaints regarding Control Panel display fade, Bosch  
11 remedied the Defect by removing the vacuum fluorescent display and replacing it with  
12 a liquid crystal display.

13           37. This alternative, feasible design has been available for decades; however,  
14 Bosch chose to design and manufacture the Control Panels with outdated and defective  
technology.

15           38. The Defect renders the Microwave/Ovens unfit for the ordinary purpose  
16 for which they are used, which is to safely and properly heat food.

17           39. As a result of the Defect, the Microwave/Ovens pose an unreasonable risk  
18 of harm to consumers and their property and are subject to premature failure.

19           40. Had Plaintiffs, Class Members, and the consuming public known that the  
20 Microwave/Ovens were defective, posed an unreasonable risk of harm to themselves  
21 and their property, and would cause damage, they would not have purchased the  
Microwave/Ovens at all, or on the same terms or for the same price.

22           41. Bosch expressly and impliedly warrants, via user manuals, advertisements,  
23 pamphlets, brochures, circulars, samples, and/or models, that the Microwave/Ovens  
24 are fit for the ordinary purpose for which they are sold.

42. Bosch expressly warrants in its Use and Care Manuals that the Microwave/Ovens are free from defect for one year.<sup>6</sup>

43. Bosch's manifest intent that its warranties apply to Plaintiffs and consumer Class Members as third-party beneficiaries, is evident from the statements contained in its product literature, including its Limited Product Warranty, which specifically states the Microwave/Ovens are to be used "[f]or your normal, household (non-commercial) use, and has in fact at all times only been used for normal household purposes." Likewise, it was reasonably foreseeable that Plaintiffs and consumer Class Members would be the intended beneficiary of the products and warranties.

44. It is generally recognized that modern microwaves should last between 9-12 years, and certainly longer than one year.<sup>7</sup> A wall oven can last even longer, up to 16 years.<sup>8</sup>

45. Bosch's Limited Product Warranty further provides:

BSH warrants that the Product is free from defect in materials and workmanship for a period of 365 days from the date of purchase. The foregoing timeline begins to run upon the date of purchase, and shall not be stalled, tolled, extended, or suspended, for any reason whatsoever.

#### Repair/Replace as Your Exclusive Remedy

During this warranty period, BSH or one of its authorized service providers will repair your Product without charge to you (subject to certain limitations stated herein) if your Product proves to have been manufactured with a defect in materials or workmanship. If reasonable

<sup>6</sup>Statement of Limited Product Warranty, at [https://media3.bosch-home.com/Documents/8001137484\\_A.pdf](https://media3.bosch-home.com/Documents/8001137484_A.pdf) (pg. 34).

<sup>7</sup> <https://www.consumerreports.org/cro/news/2009/03/by-the-numbers-how-long-will-your-appliances-last-it-depends/index.htm>; <https://brightnest.com/posts/6-signs-you-need-to-dump-your-microwave>; <https://www.thekitchn.com/6-signs-its-time-to-replace-your-microwave-228769>; <https://www.hunker.com/12003628/what-is-the-average-lifetime-of-microwave-ovens> (last accessed September 27, 2019).

<sup>8</sup> <https://www.mrappliance.com/blog/2020/august/how-long-do-ovens-last/>

1 attempts to repair the Product have been made without success, then BSH  
2 will replace your Product (upgraded models may be available to you, in  
3 BSH's sole discretion, for an additional charge). All removed parts and  
4 components shall become the property of BSH at its sole option. All  
5 replaced and/or repaired parts shall assume the identity of the original  
6 part for purposes of this warranty and this warranty shall not be extended  
7 with respect to such parts. BSH's sole liability and responsibility hereunder  
8 is to repair manufacturer- defective Product only, using a BSH-authorized  
9 service provider during normal business hours.

7 46. The Warranty fails of its essential purpose for the following reasons:

- 8 (a) Bosch fails to disclose its knowledge of the Defect when contacted by  
9 customers about Product failures;
- 10 (b) Bosch consistently replaces the Control Panel with another defective  
11 Control Panel and without remedying the actual Defect or replacing  
12 the Product with a non-defective Product, and without extending the  
13 length of the Warranty; and
- 14 (c) Microwave/Ovens that are replaced under the terms of the Warranty  
15 are also replaced with defective Microwave/Ovens.

15 47. As described herein, Bosch breached the Product warranty at the time it  
16 shipped the Microwave/Ovens (and at the point of sale to consumers) because the  
17 Microwave/Ovens were defective when they came off of the assembly line. The Defect  
18 causes the display to dim prematurely and eventually to completely and permanently  
19 darken, making consumers unable to properly or safely use the Microwave/Ovens.  
20 Thus, at the time the Microwave/Ovens were shipped and sold to consumers, Bosch  
21 was in violation of the express warranty.

21 48. Further, because Bosch does not have non-defective Microwave/Ovens  
22 available to replace the defective Microwave/Ovens, and because its repairs are simply  
23 a band-aid that do not resolve the defect, it is unable to fulfill its warranty obligations  
24

1 at the point of purchase, or anytime thereafter, and the warranty is therefore breached  
2 immediately upon purchase.

3 49. In addition, the Warranty is unconscionable as follows:

- 4 (a) In its limitation to the first owner without transferability;
- 5 (b) In the one-year time limitation when the latent defect often does not  
6 manifest until after the expiration of the limitation;
- 7 (c) In the failure and refusal to extend the time limitation at the time a  
8 replacement part is installed;
- 9 (d) In its attempt to restrict tolling of the one-year time limitation;
- 10 (e) In its attempt to confiscate and spoliage evidence by purportedly  
11 reserving the right to retain all removed components and parts during  
12 a repair;
- 13 (f) In its disclaimer of warranties; and
- 14 (g) In its limitation of remedies, including disclaimer of consequential  
damages.

15 50. The Warranty is also unconscionable given Bosch's knowledge of the  
16 Defect, the existence of the defect at the point of sale, Bosch's failure to disclose the  
17 Defect at the time of sale and during warranty communications, and in the premature  
18 failure of the Product's Control Panels.

19 51. Any limitations on the warranty are also procedurally unconscionable.  
20 There was unequal bargaining power between Bosch, on the one hand, and the  
21 Plaintiffs and Class Members, on the other.

22 52. Any limitations on the warranty are also substantively unconscionable.  
23 Bosch knew the Microwave/Ovens were defective and would continue to fail  
24 prematurely after the warranties expired. The Microwave/Ovens also pose a safety risk  
to consumers because the defect, an inability to use the Control Panel, effectively could

1 lead to consumers overheating food to a dangerous degree. Bosch failed to disclose the  
2 Defect to Plaintiffs and Class Members. And, when consumers would complain to  
3 Bosch about the Defect, Bosch actively concealed the existence of the Defect and  
4 prevented consumers from discovering it. Thus, Bosch's enforcement of the durational  
5 limitations on these warranties is harsh and shocks the conscience.

6 53. Bosch has actively concealed the existence and nature of the Defect from  
7 Class Members, despite its knowledge of the existence and pervasiveness of the Defect,  
8 and certainly well before Plaintiffs and Class Members purchased the  
9 Microwave/Ovens and during warranty communications. Specifically, Bosch has:

- 10 (a) Failed to disclose the Defect to consumers, at or after the time of purchase,  
11 including when consumers make warranty claims or otherwise complain to  
12 Bosch about the Defect;
- 13 (b) Actively concealed the Defect from consumers, at or after the time of  
14 purchase, including when consumers make warranty claims, or otherwise  
15 complain to Bosch about the Defect;
- 16 (c) Failed to disclose, and actively concealed the Defect from consumers,  
17 including that the Microwave/Ovens, specifically the Control Panel, were not  
18 fit for their intended purpose; and
- 19 (d) Failed to disclose and actively concealed the defect from consumers when it  
20 improperly and unlawfully denied valid warranty claims.

21 54. As a direct, proximate, and foreseeable result of the Defect, Plaintiffs and  
22 Class Members suffered damages, including but not limited to: (a) the difference in  
23 value of the Microwave/Ovens as purchased and the Microwave/Ovens received; (b)  
24 loss of use of the Microwave/Ovens; (c) costs to repair or replace the units, including  
labor and parts; and (d) consequential damage.

55. Plaintiffs and Class Members were in privity with Bosch because Bosch  
makes direct representations to consumers, who are the ultimate purchasers, about the

1 qualities and attributes of the Microwave/Ovens – including the aforementioned  
2 advertising on Bosch’s website about the quality of their products. *Supra*, at Para. 21.  
3 Anyone who installs the Microwave/Ovens in their home must make specific  
4 accommodations in their kitchen to fit the Product into their kitchen, including specialty  
5 cabinetry designed for Microwave/Ovens.

6 56. Further, Bosch, through its authorized dealers, issued warranties to  
7 Plaintiffs and Class Members as part of the sale of the Microwave/Ovens. For  
8 consumers with warranty claims, in its user manual, Bosch represents that either Bosch  
9 or one of its authorized service providers will perform the repairs; otherwise, the  
10 warranty is null and void.<sup>9</sup> Thus, the warranty was designed for and intended to benefit  
only the consumer—here, the Class Members.

11 57. In addition, when consumers register their Microwave/Ovens with Bosch,  
12 the company directs consumers to contact Bosch directly in the event of any issues with  
13 their Product and also promises consumers that Bosch will directly contact them if  
14 Bosch discovers any issues with the Product. In particular, in the warranty registration,  
15 Bosch represents the many “Benefits of registering your Bosch products,” including  
16 that “[c]ustomer service is fast and efficient if we have all the information in our  
17 records,” “[i]n the unlikely event of a recall or safety notice, we’ll be able to contact  
18 you,” and “[i]n the event of a loss due to fire, flood or theft, your registration may serve  
as proof of purchase for your insurance carrier.”

19 58. In any event, privity is not required here because Plaintiffs and each Class  
20 Member were (and are) intended third-party beneficiaries of the Microwave/Ovens.  
21 The retailers were not intended to be the ultimate consumers of the Microwave/Ovens  
22 and have no rights under the warranty agreements provided with the Microwave/Ovens  
to Class Members.

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24 <sup>9</sup> [https://media3.bosch-home.com/Documents/8001137484\\_A.pdf](https://media3.bosch-home.com/Documents/8001137484_A.pdf) (last accessed Dec. 30, 2020).

## **PLAINTIFFS' FACTS**

### **Plaintiff Peterson's Facts**

59. In or about 2014, Ms. Peterson began shopping for a new, reliable Microwave/Oven that would be long lasting and not require many repairs. In anticipation of purchasing a new Microwave/Oven, Ms. Peterson performed research, reviewed models at the appliance store, reviewed the manuals, and representations made by Bosch.

60. In selecting her Microwave/Oven, Ms. Peterson further relied on Bosch's representations in its written materials related to the Microwave/Ovens' quality and reliability. She did not expect that the Control Panel would cease to work and render the Product useless.

61. Ms. Peterson purchased her Bosch 800 Series Microwave/Oven from a home appliance store in September of 2014. Ms. Peterson purchased the Microwave/Oven because she believed it to be a high-end microwave/oven compared to other brands and models.

62. Ms. Peterson purchased her Microwave/Oven for normal, household (non-commercial) use, and it has in fact at all times only been used for normal household purposes.

63. The Microwave/Oven was installed in her home shortly after her purchase. Once the Microwave/Oven was installed in Ms. Peterson's kitchen, she began to regularly use it. From the time of purchase until the incident described below, Ms. Peterson used the Microwave/Oven as intended, and maintained it in a reasonable manner as an owner of an appliance.

64. After using the Microwave/Oven for some time, Ms. Peterson's Microwave/Oven display had faded to the point it was no longer readable, or acceptable for use. Specifically, Ms. Peterson was no longer able to read the clock, timer, power level, mode, or temperature.



1           65. Consequently, Ms. Peterson performed research online and discovered  
2 numerous other consumers reporting the same or similar incidences of display fading  
3 and failure.

4           66. Thereafter, Ms. Peterson replaced the display in her Microwave/Oven so  
5 that she would be able to use it. For a period of time, Ms. Peterson's display functioned  
6 as expected. However, the display in the Microwave/Oven already has begun to fade  
7 again and will likely fail in the same manner.

8           67. Because Bosch unlawfully concealed the Defect from Ms. Peterson before  
9 her purchase, as well as after the Microwave/Oven was installed in her home, she did  
10 not suspect (and had no reason to suspect) that there was anything wrong with the  
11 microwave/oven until the Defect manifested.

12           68. Ms. Peterson's Microwave/Oven has not operated properly for the  
13 expected useful life of the Microwave/Oven. Had she known of the Defect, she would  
14 have either not purchased the Microwave/Oven or would have paid less than she did.  
15 Therefore, she did not receive the benefit of her bargain.

#### 14 **Plaintiff Carlton's Facts**

15           69. In or about the spring of 2020, Ms. Carlton began shopping for a new,  
16 reliable Microwave/Oven that would be long lasting and not require many repairs. In  
17 anticipation of purchasing a new Microwave/Oven, Ms. Carlton looked at various  
18 online retailers' websites, including Best Buy's website, to learn more about the Bosch  
19 Microwave/Oven.

20           70. In selecting her Microwave/Oven, Ms. Carlton further relied on Bosch's  
21 representations in its written materials related to the Microwave/Ovens' quality and  
22 reliability. She did not expect that the Control Panel would cease to work and render  
23 the Product useless.

24           71. Ms. Carlton purchased her Bosch Model HBL87M53UC from Appliance  
Outlet in May of 2020. Ms. Carlton purchased her Microwave/Oven because she



1 believed it to be a high-end microwave/oven compared to other brands and models.  
2 Ms. Carlton purchased her Microwave/Oven for normal, household (non-commercial)  
3 use, and it has in fact at all times only been used for normal household purposes.

4 72. The Microwave/Oven was installed in her home shortly after her purchase.  
5 Once the Microwave/Oven was installed in Ms. Carlton's kitchen, she began to  
6 regularly use it. From the time of purchase until the incident described below, Ms.  
7 Carlton used the Microwave/Oven as intended, and maintained it in a reasonable  
8 manner as an owner of an appliance.

9 73. Almost immediately after installation, Ms. Carlton noticed the display on  
10 the microwave was dimmer than that of the convection oven. In March 2021, less than  
11 a year after her purchase, the microwave stopped working altogether.

12 74. After learning that her Microwave/Oven suffered from a defect, which  
13 Bosch knew or should have known, but which was unknown to Ms. Carlton at the time  
14 she purchased the Microwave/Oven, she performed research online and discovered  
15 numerous other consumers reporting the same or similar incidences of display fading  
16 and failure.

17 75. In March of 2021, Ms. Carlton contacted Bosch and put them on notice of  
18 the problems she experienced with her Microwave/Oven. At that time, the Bosch  
19 representative authorized a repair of the Microwave/Oven, as it was still under  
20 warranty.

21 76. An authorized Bosch technician was sent to Ms. Carlton's home to fix the  
22 Microwave/Oven. The technician was unsuccessful in repairing the Microwave/Oven,  
23 and the display has remained dim.

24 77. Because Bosch unlawfully concealed the Defect from Ms. Carlton before  
her purchase, as well as after the Microwave/Oven was installed in her home, she did  
not suspect (and had no reason to suspect) that there was anything wrong with the  
Microwave/Oven until the Defect manifested.

1           78. Ms. Carlton's Microwave/Oven has not operated properly for its life  
2 expectancy. Had she known of the Defect, she would have either not purchased the  
3 Microwave/Oven or would have paid less than she did. Therefore, she did not receive  
4 the benefit of her bargain.

5 **Plaintiff Hirsch's Facts**

6           69. In or about 2015, Ms. Hirsch began shopping for a new, reliable  
7 Microwave/Oven that would be long lasting and not require many repairs. In  
8 anticipation of purchasing a new Microwave/Oven, Ms. Hirsch performed research,  
9 reviewed models at the appliance store, reviewed the manuals, and representations  
made by Bosch.

10           70. In selecting her Microwave/Oven, Ms. Hirsch further relied on Bosch's  
11 representations in its written materials related to the Microwave/Ovens' quality and  
12 reliability. She did not expect that the Control Panel would cease to work and render  
13 the Product useless.

14           71. Ms. Hirsch purchased her Bosch 800 Series Microwave/Oven from a  
15 home appliance store in November of 2015. Ms. Hirsch purchased her  
16 Microwave/Oven because she believed it to be a high-end microwave/oven compared  
17 to other brands and models. In fact, she had her cabinetry built around the  
Microwave/Oven.

18           72. Ms. Hirsch purchased her Microwave/Oven for normal, household  
19 (non-commercial) use, and it has in fact at all times only been used for normal  
20 household purposes.

21           73. The Microwave/Oven was installed in her home shortly after her  
22 purchase. Once the Microwave/Oven was installed in Ms. Hirsch's kitchen, she began  
23 to regularly use it. From the time of purchase until the incident described below, Ms.  
24

1 Hirsch used the Microwave/Oven as intended, and maintained it in a reasonable  
2 manner as an owner of an appliance.

3 74. On or around September of 2019, Ms. Hirsch's Microwave/Oven display  
4 had faded to the point it was no longer readable, or acceptable for use. Specifically, Ms.  
5 Hirsch was no longer able to read the clock, timer, power level, mode, or temperature.

6 75. Consequently, Ms. Hirsch performed research online and discovered  
7 numerous other consumers reporting the same or similar incidences of display fading  
8 and failure.

9 76. In September of 2019, Ms. Hirsch emailed Bosch and put them on notice  
10 of the problems she experienced with her Microwave/Oven. Her email specifically  
11 stated:

12 I am having the same issue as it appears hundreds of other people  
13 are having, that the display is getting dimmer and dimmer, and  
14 almost impossible to read. We had our kitchen cabinets built  
15 Around this appliance assuming it would be a quality appliance, so  
16 we cannot easily replace it. I see from the reviews this is a known  
17 problem. Is there a fix available, is the warranty extended, and how  
18 can this be resolved? I have not yet looked to see if there is a class  
19 action regarding this issue.

20 77. At that time, the Bosch representative informed Ms. Hirsch she could  
21 not make a warranty claim because she could not immediately locate her receipt.<sup>10</sup> The  
22 Bosch representative failed to respond to any of Ms. Hirsch's other questions, or  
23 acknowledge that the Defect existed, or that Bosch knew about the Defect.

24 78. Ms. Hirsch continued to use her Microwave/Oven because she had no  
other recourse at that time; however, the display continued to dim and accomplish total  
failure.

79. Consequently, Ms. Hirsch again contacted a Bosch repair technician. On  
November 11, 2020, the technician replaced the Control Panel and noted, "[t]he

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<sup>10</sup> Ms. Hirsch was later able to locate her receipt.

1 display was dim and unit not working at all.” Ms. Hirsch paid out-of-pocket for the  
2 replacement of the original Control Panel.

3 80. However, upon information and belief, the new Control Panel is likewise  
4 defective and will fail in the same manner.

5 81. Because Bosch unlawfully concealed the Defect from Ms. Hirsch before  
6 her purchase, as well as after the Microwave/Oven was installed in her home, she did  
7 not suspect (and had no reason to suspect) that there was anything wrong with the  
8 microwave/oven until the Defect manifested.

9 82. Ms. Hirsch’s microwave has now completely failed, and the  
10 Microwave/Oven has not operated properly for the expected useful life of the  
11 Microwave/Oven. Had she known of the Defect, she would have either not purchased  
12 the Microwave/Oven or would have paid less than she did. Therefore, she did not  
13 receive the benefit of her bargain.

#### **Plaintiff O’Dell’s Facts**

14 83. In or about early 2018, Ms. O’Dell began shopping for a new, reliable  
15 microwave/oven that would be long lasting and not require many repairs. In  
16 anticipation of purchasing a new Microwave/Oven, Ms. O’Dell researched Bosch’s  
17 microwave/ovens online, including on Home Depot’s and Lowe’s’ websites.

18 84. In selecting her Microwave/Oven, Ms. O’Dell further relied on Bosch’s  
19 representations in its written materials related to the Microwave/Ovens’ quality and  
20 reliability. She did not expect that the Control Panel would cease to work and render  
21 the Product useless.

22 85. Ms. O’Dell purchased her Bosch 800 Series Microwave/Oven from  
23 Aggressive Appliances in February of 2018. Ms. O’Dell purchased her  
24 Microwave/Oven because she believed it to be a high-end microwave/oven compared  
to other brands and models. Ms. O’Dell purchased her Microwave/Oven for normal,

1 household (non-commercial) use, and it has in fact at all times only been used for  
2 normal household purposes.

3 86. Ms. O'Dell purchased the Microwave/Oven for use in her new home.  
4 Due to construction delays, the Microwave/Oven was not installed in her home until  
5 May of 2018, approximately two months after her purchase. Once the  
6 Microwave/Oven was installed in Ms. O'Dell's kitchen, she began to regularly use it.  
7 From the time of purchase until the incident described below, Ms. O'Dell used the  
8 Microwave/Oven as intended, and maintained it in a reasonable manner as an owner  
9 of an appliance.

10 87. Within the first few months of using the Microwave/Oven, Ms. O'Dell  
11 began to notice issues with the display, which appeared faint. Ms. O'Dell contacted  
12 Bosch, who authorized a repair of the Microwave/Oven. However, the purported  
13 "fix" failed to resolve the issue, and the display remained faded.

14 88. On approximately April 8, 2020, the microwave failed completely and  
15 would no longer heat food. Ms. O'Dell contacted Bosch, but at that time, the Bosch  
16 representative denied the warranty claim as the warranty had expired. The Bosch  
17 representative failed to acknowledge that the Defect existed, or that Bosch knew about  
18 the Defect.

19 89. After learning that Bosch had denied her claim, Ms. O'Dell contacted  
20 Aggressive Appliances to resolve the issue. A service technician from Aggressive  
21 Appliances inspected the Microwave/Oven on April 14, 2020 and attempted fix it by  
22 replacing a switch in the microwave. This failed to resolve the issue, and the technician  
23 informed Ms. O'Dell that he would need to order additional parts. The repair was  
24 finally completed on April 28, 2020 and Ms. O'Dell paid out-of-pocket for the parts  
and labor.

90. After learning that her Microwave/Oven suffered from a defect, which  
Bosch knew or should have known, but which was unknown to Ms. O'Dell at the time

1 she purchased the Microwave/Oven, she performed research online and discovered  
2 numerous other consumers reporting the same or similar incidences of display fading  
3 and failure.

4 91. Because Bosch unlawfully concealed the Defect from Ms. O'Dell before  
5 her purchase, as well as after the Microwave/Oven was installed in her home, she did  
6 not suspect (and had no reason to suspect) that there was anything wrong with the  
7 Microwave/Oven until the Defect manifested.

8 92. Ms. O'Dell's Microwave/Oven has not operated properly for its life  
9 expectancy. Had she known of the Defect, she would have either not purchased the  
10 Microwave/Oven or would have paid less than she did. Therefore, she did not receive  
11 the benefit of her bargain.

#### 11 **Plaintiff Ramakrishnan's Facts**

12 103. In or about early 2018, Mr. Ramakrishnan began shopping for a new,  
13 reliable microwave/oven that would be long lasting and not require many repairs. In  
14 anticipation of purchasing a new microwave/oven, Mr. Ramakrishnan researched  
15 Bosch's 800 Series Microwave/Ovens on various online forums and through  
16 discussion with Abt Electronics, an authorized Bosch dealer.

17 104. In selecting his Microwave/Oven, Mr. Ramakrishnan further relied on  
18 Bosch's representations in its written materials related to the Microwave/Ovens'  
19 quality and reliability. He did not expect that the Control Panel would cease to work  
20 and render the Product useless.

21 105. Mr. Ramakrishnan purchased his Bosch 800 Series Microwave/Oven in  
22 February of 2018. Mr. Ramakrishnan purchased his Microwave/Oven because he  
23 believed it to be a high-end Microwave/Oven compared to other brands and models.  
24 Mr. Ramakrishnan purchased his Microwave/Oven for normal, household (non-  
commercial) use, and it has in fact at all times only been used for normal household  
purposes.

1           106. The Microwave/Oven was installed in his home shortly after his  
2 purchase. Once the Microwave/Oven was installed in Mr. Ramakrishnan's kitchen, he  
3 began to regularly use it. From the time of purchase until the incident described below,  
4 Mr. Ramakrishnan used the Microwave/Oven as intended, and maintained it in a  
5 reasonable manner as an owner of an appliance.

6           107. Within a year of his purchase, Mr. Ramakrishnan noticed that the display  
7 on the Microwave/Oven was faded.

8           108. After learning that his Microwave/Oven suffered from a defect, which  
9 Bosch knew or should have known, but which was unknown to Mr. Ramakrishnan at  
10 the time he purchased the Microwave/Oven, he performed research online and  
11 discovered numerous other consumers reporting the same or similar incidences of  
display fading and failure.

12           109. In 2019, Mr. Ramakrishnan first contacted Bosch and put them on notice  
13 of the problems he experienced with his Microwave/Oven. At that time, the Bosch  
14 representative directed Mr. Ramakrishnan to contact the retailer, who sent a service  
15 technician to diagnose the problem.<sup>11</sup> The service technician could not diagnose the  
16 problem, and attempted multiple fixes to resolve the issue. In fact, there have been  
approximately three attempted repairs and the issue continued.

17           110. The last repair was made in February of 2021, and, upon information and  
18 belief, the new Control Panel is likewise defective and will fail in the same manner.

19           111. Mr. Ramakrishnan was required to pay diagnostic fees each and every  
20 time a technician inspected the Microwave/Oven.

21           112. Bosch failed to acknowledge that any Defect existed, or that Bosch knew  
22 about the Defect.

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23 <sup>11</sup> In fact, Plaintiff was repeatedly directed to make the initial warranty claim through  
24 the appliance repair company.



1           113. Because Bosch unlawfully concealed the Defect from Mr. Ramakrishnan  
2 before his purchase, as well as after the Microwave/Oven was installed in his home,  
3 he did not suspect (and had no reason to suspect) that there was anything wrong with  
4 the Microwave/Oven until the Defect manifested.

5           114. Mr. Ramakrishnan's Microwave/Oven has not operated properly for its  
6 life expectancy. Had he known of the Defect, he would have either not purchased the  
7 Microwave/Oven or would have paid less than he did. Therefore, he did not receive  
8 the benefit of his bargain.

9                                   **BOSCH'S ACTUAL OR**  
10                                  **CONSTRUCTIVE KNOWLEDGE OF THE DEFECT**

11           115. Each Plaintiff put Bosch on direct notice of the Defect in their  
12 Microwave/Ovens either through Bosch or Bosch's authorized repair company when  
13 she replaced her Control Panel.

14           116. On August 3, 2021, via letter by undersigned counsel, Plaintiff Hirsch and  
15 another consumer put Bosch on notice of breach of warranties, breach of contract,  
16 unjust enrichment, negligence, strict liability, and violations of various consumer  
17 protection statutes. The notice was sent on behalf of Plaintiff Hirsch and putative Class  
18 Members across the country. The letter was supplemented on August 5, 2021. The  
19 letters were delivered to Bosch's California and Delaware registered agents between  
20 August 9, 2021 and August 10, 2021.

21           117. In addition to Plaintiffs' direct notice, Bosch knew or should have known  
22 when it sold the Microwave/Ovens to the public that they suffered from the Defect,  
23 and that the defect caused the Control Panels to function improperly during their  
24 expected useful life, represented an unreasonable risk that the Control Panels would  
fade, and, ultimately, might result in significant personal injury and/or property damage  
to consumers and the public.



118. Bosch's knowledge of these facts is established through consumer complaints that the Microwave/Ovens failed during normal use. Despite its knowledge, Bosch did not remedy or eliminate the Defect in the Microwave/Ovens or remove them from the stream of commerce. Nor did Bosch contact consumers to give notice of the Defect, even though Bosch was made aware of the defect and even though their warranty states that they would contact consumers when made aware of Defects in their products.

119. Bosch's actual knowledge of the Defect is evidenced by consumer complaints under reviews for the Product various consumer websites.

120. The complaints on its own website and other retailers' websites further demonstrate that Bosch has been aware of the dangerous and potentially harmful defect and has not taken any steps to remedy the dangerous defect or recall the Microwave/Ovens.

121. For example, consumers noted:

One customer who initially believed they had purchased a great product, updated their review as follows:<sup>12</sup>

The Bosch Stainless Steel speed oven is amazing. It is expensive  
Reviewed in the United States on July 31, 2016  
Verified Purchase

UPDATE: I have had this unit for 2 years now and the top display began to dim. **I called Bosch and they said that there isn't a way to replace the bulb and that the entire display on the microwave needs to be replaced.** [Emphasis added].

<sup>12</sup> [https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm\\_cr\\_unknown?filterByStar=three\\_star&pageNumber=1](https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm_cr_unknown?filterByStar=three_star&pageNumber=1) (Last accessed August 10, 2021).

In June of 2018, an Amazon reviewer wrote in a lengthy post:<sup>13</sup>

**Works great but display fades prematurely if clock is left in default position [sic]. User Manual needs fixing!**

Reviewed in the United States on June 2, 2018

I have the HMC80251UC over a matching Convection oven and warming drawer. I am positive about the performance, but there is a critical omission in the instruction book that has made a lot of very unhappy customers who have crossed Bosch off of their list forever. I am a retired electronics engineer and I have been a serious cook for decades. Also, during the last 30 years of my career, I have served on numerous design review and failure review boards. Most of the complaints are that the display grew too dim to use. The life span varied from a few months to two years. My display did the same thing over two years. Unfortunately, Bosch does not sell the display module alone. One has to buy the entire top level Control Panel Assembly. The part cost \$200 directly from Bosch, not \$400 as reported by some

In September of 2018, an Amazon user complained:<sup>14</sup>

**Very disapointed**

Reviewed in the United States on September 4, 2018

Oven is great but the microwave has had many problems. The last one the light on the microwave went so dim it was very difficult to read up close. Had to replace the whole upper panel at a cost of 450 plus. Now the light is no brighter on high than on medium. Unit is two years old. Very disappointed.

In November of 2018, another Amazon user noted:<sup>15</sup>

<sup>13</sup> [https://www.amazon.com/gp/customer-reviews/RJ93VY3JLIY96/ref=cm\\_cr\\_arp\\_d\\_viewpnt?ie=UTF8&ASIN=B00JKA5EGG#RJ93VY3JLIY96](https://www.amazon.com/gp/customer-reviews/RJ93VY3JLIY96/ref=cm_cr_arp_d_viewpnt?ie=UTF8&ASIN=B00JKA5EGG#RJ93VY3JLIY96) (Last accessed August 10, 2021).

<sup>14</sup> [https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm\\_cr\\_unknown?filterByStar=two\\_star&pageNumber=1](https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm_cr_unknown?filterByStar=two_star&pageNumber=1) (Last accessed August 10, 2021).

<sup>15</sup> [https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm\\_cr\\_unknown?filterByStar=two\\_star&pageNumber=1](https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm_cr_unknown?filterByStar=two_star&pageNumber=1)

**Unreliable**

Reviewed in the United States on November 4, 2018

If you purchase this product, buy an extended warranty --you will need it. I wish I had. I would not buy another Bosch. Microwave is two years old. The electrical panel has been replaced. Today the panel went out a second time. Unreliable. I paid more money for this product because it was supposed to be of better quality. The repair estimate is excessive. Not worth the price.

In April of 2019, an Amazon user further complained:<sup>16</sup>

**Poor Customer Support for poor quality appliance**

Reviewed in the United States on April 23, 2019

**My display became very dim just after the warranty ran out. This has been an ongoing problem for them with this unit, but instead of recalling it and doing the right thing, they are satisfied with the poor quality.** I've had it for 4 years and now the rotating tray is sparking. I have called and gone back and forth with emailing documents to Bosch Customer Service and they are obviously trying to make me cry "uncle". [Emphasis added].

From one reviewer in or about Winter of 2019 on Bosch's website (HBL8752UC):<sup>17</sup>

We are on our 2<sup>nd</sup> 800 Series Combination Oven. The electrical panel for the microwave/convection portion failed twice in the first 4 years. After the 2<sup>nd</sup> failure, our warranty company replaced the entire combination unit as the electrical panel was no longer available (after only 4 years!)... We're

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[reviews/B00JKA5EGG/ref=cm\\_cr\\_unknown?filterByStar=one\\_star&pageNumber=1](https://www.bosch-home.com/us/productslist/cooking-baking/wall-ovens/combination-ovens/HBL8753UC#/Tabs=section-reviews/) (Last accessed August 10, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> <https://www.bosch-home.com/us/productslist/cooking-baking/wall-ovens/combination-ovens/HBL8753UC#/Tabs=section-reviews/> (last accessed Dec. 30, 2020).

1 crossing our fingers that we do not have the same electronic panel issues  
2 as the last one!

3 From an unhappy Bosch customer in or about the Winter of 2019 after multiple  
4 attempts to solve their Control Panel issue (HBL8752UC):<sup>18</sup>

5 I have the same problem as one of the other reviewers. Unit has been  
6 nonfunctional since mid-January and it is now mid-July and still not  
7 working. Microwave display went blank and unit ceased to function...  
Now July 17<sup>th</sup> and it is still not functioning.

8 In April of 2020, another Amazon reviewer stated:<sup>19</sup>

9 **Bad Boards**

10 Reviewed in the United States on April 1, 2020

11 I purchased this oven in 2016. Generally, I really like it. Both the  
12 microwave and the ovens have great features and both work well. My  
13 reason for three stars is that **within one year I had to have the control  
14 panel on the lower oven replaced. It was faulty and was getting very  
15 hot to the touch. Fortunately, that was covered under warranty. Just  
16 this week, less than four years later, I had to replace the top control  
17 panel on the microwave. It flat out died, and cost \$500 to replace, of  
18 course out of warranty. This was not a cheap appliance. A panel  
19 should last more than four years.** Come on Bosch, you can and should  
20 do better. (Emphasis added).

21 From one reviewer in or about the Spring of 2020 (HBL8752UC):<sup>20</sup>

22 ... Do not be fooled! Last week after microwaving my lunch ... the  
23 microwave panel went out. I checked the electrical fuse and it had not  
24 been tripped so I figured it was something internal. A reliable service man  
came and before he took the unit apart and tested it to see if electricity

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21 <sup>18</sup> *Id.*

22 <sup>19</sup> [https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm\\_cr\\_unknown?filterByStar=three\\_star&pageNumber=1](https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm_cr_unknown?filterByStar=three_star&pageNumber=1) (Last accessed August 10, 2021).

24 <sup>20</sup> *Id.*

1 was there, he diagnosed a faulty panel. **He said he has had to replace**  
 2 **these panels quite often...** So the total bill for the microwave that is not  
 3 overused or abused is \$454.00... Anyway you look at this [appliance], add  
 an extra \$450 to your price.

4 From another Amazon user:<sup>21</sup>

5 **BEWARE buying Bosch Appliance.**

6 Reviewed in the United States on June 10, 2020

7 BEWARE!!!

8 Control panel of the microwave became unreadable and the turntable has  
 9 stopped turning after just 2.5 years of home use. Pretty much a useless  
 \$1,500.00 microwave at this point.

10 122. Not only does the number of complaints over the course of several years  
 11 demonstrate Bosch was on notice of the Defect, but the substance of several complaints  
 12 note that Bosch was put on direct notice and that these panels are being frequently  
 13 replaced for significant out of pocket costs.

14 123. In addition, these online reviews about the Defect are quite likely only a  
 15 fraction of the complaints Bosch received about the Defect. Bosch has a Customer  
 16 Support Center that fields calls from consumers about issues with their products, and  
 17 consumers can contact Bosch by email through the “contact us” function on Bosch’s  
 18 website. The online review function is a way for those consumers who wish to share  
 19 their experiences with others; undoubtedly consumers who do so are a subset of those  
 20 who contact Bosch about it.

21  
 22 <sup>21</sup> [https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm\\_cr\\_unknown?filterByStar=one\\_star&pageNumber=1](https://www.amazon.com/Bosch-HBL8751UC800-Stainless-Electric-Combination/product-reviews/B00JKA5EGG/ref=cm_cr_unknown?filterByStar=one_star&pageNumber=1) (Last accessed August 10, 2021).  
 23  
 24

1           124. In conjunction with Bosch's experience with kitchen appliances, including  
2 the participation of designing, manufacturing and selling the Microwave/Ovens, these  
3 facts and complaints illustrate that Bosch knew or should have known of the Defect.

4           125. Bosch has a duty to disclose the Defect and to not conceal the Defect  
5 from Plaintiffs and Class Members. Bosch's failure to disclose, or active concealment  
6 of, the serious safety defect places Plaintiffs and Class Members at risk of personal  
7 injury and/or property damage.

8           126. Bosch is currently still selling the defective Microwave/Ovens, concealing  
9 the Defect, failing to notify consumers of the safety Defect, and failing to recall the  
10 Microwave/Ovens.

11           127. Moreover, Bosch continues to falsely represent through written warranties  
12 that the Microwave/Ovens are free from Defect, are of merchantable quality, and will  
13 perform dependably for years.

14           128. When corresponding with customers, Bosch does not disclose that the  
15 Microwave/Ovens suffer from the Defect. As a result, reasonable consumers, including  
16 Plaintiffs and Class Members, purchased and used, and continue to purchase and use  
17 the Microwave/Ovens in their homes even though it is unsafe to do so.

18           129. Had Plaintiffs, Class Members, and the consuming public known that the  
19 Microwave/Ovens were defective, posed an unreasonable risk of harm to themselves  
20 and their property, and would cause damage, they would not have purchased them.

21           130. Bosch has wrongfully placed on Plaintiffs and Class Members the burden,  
22 expense, and difficulty involved in discovering the Defect, repairing and replacing the  
23 Control Panels (potentially multiple times), and paying for the cost of damages caused  
24 by the Defect.

**TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS**

131. Bosch had actual awareness for years that the Microwave/Ovens contain a Defect that the Control Panel fails.

132. Although Bosch was aware of the Defect, it took no steps to warn Plaintiffs or the Class of such Defect and the dangers the Defect would pose.

133. At least by 2016, if not earlier, Bosch had received numerous reports of these units failing to work due to issues related to the Control Panels.

134. Bosch has purportedly changed its manufacturing process in its attempt to correct the problem for newly manufactured Bosch-branded Microwave/Ovens, without notifying consumers of these changes.

135. Bosch did not, however, issue a recall, warn consumers, or take any other affirmative steps to correct the problem in the Microwave/Ovens already in the field with the Defect, neither did Bosch take steps to alert members of the Class about the problem.

136. Despite its knowledge, Bosch has fraudulently concealed the fact that the Microwave/Ovens were defective, even though it had a duty to disclose the Defect.

137. Bosch made affirmative misrepresentations to consumers during the sale of these Microwave/Ovens, including that they were free of defect.

138. Bosch made affirmative misrepresentations to Plaintiffs and consumers during warranty claims and other correspondence with consumers lodging complaints, including that their problems with the Microwave/Ovens have been resolved in an effort to persuade consumers to accept replacement parts, including that replacement Control Panels would remedy the problem, and in other ways to be discovered.

139. At all times, Bosch concealed that the Microwave/Ovens and any replacements were defective.

140. Bosch's concealment was material to Plaintiffs' and Class Members' decision to purchase the Microwave/Ovens. Bosch's concealment was knowing, and



1 Bosch intended to mislead Plaintiffs and Class Members into relying upon it.  
2 Accordingly, Plaintiffs and Class Members relied upon Bosch's concealment of these  
3 material facts and suffered injury as a proximate result of that justifiable reliance.

4 141. The Defect in the design and/or manufacture of the Microwave/Ovens  
5 was not detectible to Plaintiffs and members of the Class.

6 142. Bosch actively and intentionally concealed the existence of the Defect and  
7 failed to inform Plaintiffs or Class Members of the existence of the Defect at all times,  
8 including when they contacted Bosch about the problems. Accordingly, Plaintiffs' and  
9 Class Members' lack of awareness was not attributable to lack of diligence on their part.

10 143. Bosch's statements, words, and acts were made for the purpose of  
11 suppressing the truth that the Microwave/Ovens and replacements were defective.

12 144. Bosch concealed the defect for the purpose of delaying Plaintiffs and  
13 Class Members from filing a complaint on their causes of action.

14 145. As a result of Bosch's active concealment of the defect and/or failure to  
15 inform Plaintiffs and members of the Class of the defect, any and all applicable statutes  
16 of limitations otherwise applicable to the allegations herein have been tolled.  
17 Furthermore, Bosch is estopped from relying on any statutes of limitations in light of  
18 its active concealment of the defective nature of the Microwave/Ovens.

19 146. Further, the causes of action alleged herein did not occur until Plaintiffs  
20 and Class Members discovered that their Microwave/Ovens had the Defect. Plaintiffs  
21 and Class Members had no realistic ability to discern that the Microwave/Ovens were  
22 defective until they learned of the existence of the Defect. In either event, Plaintiffs and  
23 Class Members had no reason to discover their causes of action because of Bosch's  
24 active concealment of the true nature of the Defect.



**FED. R. CIV. P. 9(b) ALLEGATIONS**  
**(Affirmative and By Omission)**

147. Although Bosch is in the best position to know what content it placed on its website(s) and in marketing materials during the relevant timeframe, to the extent necessary, Plaintiffs satisfy the requirements of Rule 9(b) by alleging the following facts with particularity:

148. WHO: Bosch made material misrepresentations and/or omissions of fact through its website representations, warranties, owner's manuals, labeling and marketing, statements and representations made by employees receiving warranty claims, and through statements and representations made by its authorized retailers of the Microwave/Ovens, which include statements such as that the Microwave/Ovens were not defective, were of high-quality, and were suitable for their purpose of safely and properly cooking and heating food.

149. WHAT: Bosch's conduct here was, and continues to be, fraudulent because it omitted and concealed that the Microwave/Ovens are (a) defective, in that the Control Panel dims or fades to a point where the display panel is difficult or impossible to read, rendering the Microwave/Ovens unusable, (b) are not of high-quality, (c) could present a safety hazard when being used as intended, and (d) could fail prior to the completion of their expected useful life. Bosch's employees and authorized agents and representatives made affirmative misrepresentations to Plaintiffs and Class Members regarding the same qualities. Further, Bosch's conduct deceived Plaintiffs and Class Members into believing that the Microwave/Ovens are not defective, are high-quality, are safe to use, and will last at least as long as the full duration of their expected useful life. Bosch knew or should have known this information is material to reasonable consumers, including Plaintiffs and Class Members in making their purchasing decisions, yet it omits any warning that the Microwave/Ovens suffer from the Defect.

1           150. WHEN: The material misrepresentations and/or omissions detailed  
2 herein were made prior to and available at the time Plaintiffs and Class Members  
3 performed research on the Microwave/Ovens to gather information that would aid  
4 them in selecting the best microwave/oven to purchase; prior to and at the time  
5 Plaintiffs and Class Members purchased the Microwave/Ovens, prior to and at the time  
6 Plaintiffs and Class Members made claims about the Defect, and continuously  
7 throughout the applicable Class periods.

8           151. WHERE: Bosch's material misrepresentations and/or omissions were  
9 made on its website(s), through marketing materials, in warranties, in user manuals, on  
10 the labeling of the packaging, as well as through statements made by its employees and  
11 authorized retailers.

12           152. HOW: Bosch made misrepresentations and/or failed to disclose material  
13 facts regarding the true safety risks of normal use of the Microwave/Ovens in written  
14 form, electronic form, or conventional hardcopy form, as well as verbally through  
15 statements made by its employees and authorized retailers.

16           153. WHY: Bosch made the material misrepresentations and/or omissions  
17 detailed herein for the express purpose of inducing Plaintiffs, Class Members, and all  
18 reasonable consumers to purchase and/or pay for the Microwave/Ovens, the effect of  
19 which was that Bosch profited by selling the Microwave/Ovens to many thousands of  
20 consumers.

21           154. INJURY: Plaintiffs and Class Members purchased or paid more for the  
22 Microwave/Ovens when they otherwise would not have absent Bosch's  
23 misrepresentations and/or omissions. Further, the Microwave/Ovens continue to pose  
24 unreasonable safety risks and cause consumers to incur unnecessary and unreasonable  
out-of-pocket expenses when manifestation of the Defect occurs.

**CLASS ACTION ALLEGATIONS**

155. Plaintiffs bring this action individually and as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) on behalf of the following Nationwide Class:

All persons who purchased for personal use and not for resale a Bosch microwave/combo oven equipped with a vacuum fluorescent display (“VFD”) control panel in the U.S., during the Class Period.

156. The “Class Period” shall be from January 1, 2014 until the date of preliminary approval of the Settlement Agreement.

157. Plaintiffs reserve the right to modify the class definitions if necessary to include additional Bosch ovens, microwaves, or other series combination units with the same Defect and/or other Microwave/Ovens manufactured by Bosch with the common Defect but bearing different brand names.

158. Numerosity: The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class Members is presently unknown, it consists of thousands of people geographically dispersed throughout the United States, including Washington. The number of Class Members can be determined by sales information and other records. Moreover, joinder of all potential Class Members is not practicable given their numbers and geographic diversity. The Class is readily identifiable from information and records in the possession of Bosch and its third-party distributors.

159. Commonality: Common questions of law and fact exist as to all members of the Class. These questions predominate over questions that may affect only individual Class Members because Bosch has acted on grounds generally applicable to the Class. Such common legal or factual questions include, *inter alia*:

(a) Whether the Microwave/Ovens are defective;

- (b) Whether the Microwave/Ovens are defectively designed and/or manufactured;
- (c) Whether Bosch knew or reasonably should have known about the Defect prior to distributing the Microwave/Ovens to Plaintiffs and the members of the Class;
- (d) Whether Bosch concealed from and/or failed to disclose to Plaintiffs and the members of the Class the problems with the Microwave/Ovens;
- (e) Whether Bosch knew or reasonably should have known about the Defect after distributing the Microwave/Ovens to Plaintiffs and the members of the Class;
- (f) Whether Bosch breached the implied warranty of merchantability;
- (g) Whether Bosch breached express warranties relating to the Microwave/Ovens;
- (h) Whether Bosch's Limited Product Warranty is unconscionable;
- (i) Whether Bosch should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Microwave/Ovens;
- (j) Whether Plaintiffs and the members of the Classes are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of such damages;
- (k) Whether Bosch should be enjoined from selling and marketing its defective Microwave/Ovens; and
- (l) Whether Bosch engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective Microwave/Ovens.

160. Typicality: Plaintiffs' claims are typical of the members of the Class as all members of the Class are similarly affected by the same defect and Bosch's actionable conduct. Plaintiffs and all members of the Class purchased the Microwave/Ovens with a defect that makes the Microwave/Ovens inherently dangerous. In addition, Bosch's conduct that gave rise to the claims of Plaintiffs and members of the Class (*i.e.*, delivering defective Microwave/Ovens, concealing the Defect, and breaching warranties with respect to the Microwave/Ovens) is the same for all members of the Class.

1           161. Adequacy of Representation: Plaintiffs will fairly and adequately protect  
2 the interests of the Class because she has no interests antagonistic to, or in conflict with,  
3 the Class that Plaintiffs seek to represent. Furthermore, Plaintiffs have retained counsel  
4 experienced and competent in the prosecution of complex class action litigation.

5           162. Injunctive/Declaratory Relief: The elements of Rule 23(b)(2) are met.  
6 Bosch will continue to commit the unlawful practices alleged herein, and members of  
7 the Class will remain at an unreasonable and serious safety risk as a result of the defect.  
8 Bosch has acted and refused to act on grounds that apply generally to the Class, such  
9 that final injunctive relief and corresponding declaratory relief is appropriate respecting  
the Class as a whole.

10           163. Predominance: The elements of Rule 23(b)(3) are met. The common  
11 questions of law and fact enumerated above predominate over the questions affecting  
12 only individual members of the Class, and a class action is the superior method for the  
13 fair and efficient adjudication of this controversy. The likelihood that individual Class  
14 Members will prosecute separate actions is remote due to the time and expense  
15 necessary to conduct such litigation. Serial adjudication in numerous venues is not  
16 efficient, timely, or proper. Judicial resources will be unnecessarily depleted by  
17 resolution of individual claims. Joinder on an individual basis of hundreds or thousands  
18 of claimants in one suit would be impractical or impossible. Individualized rulings and  
judgments could result in inconsistent relief for similarly-situated Plaintiffs.

19           164. Plaintiffs know of no difficulty to be encountered in the maintenance of  
20 this action that would preclude its maintenance as a class action.

21           165. Bosch has acted or refused to act on grounds generally applicable to the  
22 Class, thereby making appropriate final injunctive relief or corresponding declaratory  
23 relief with respect to the Class as a whole.  
24

1           166. Plaintiffs re-alleges and incorporates by reference all of the preceding  
2 paragraphs and allegations of this Complaint, including the factual allegations, tolling  
3 allegations, and class action allegations, as though fully set forth in each of the following  
4 Claims for Relief asserted on behalf of the Class.

5                                   **FIRST CLAIM FOR RELIEF**  
6                                   **Breach of Implied Warranties**  
7                                   **(Plaintiffs Individually and on Behalf of the Nationwide Class)**

8           167. Plaintiffs hereby adopt and incorporate by reference all foregoing  
9 allegations as though fully set forth herein.

10           168. Bosch is a merchant and was at all relevant times involved in the  
11 manufacturing, and is the distributor, warrantor, and/or seller of the  
12 Microwave/Ovens. Bosch knew or had reason to know of the specific use for which  
13 the Microwave/Ovens, as goods, were purchased.

14           169. The Microwave/Ovens were at all relevant times a “good.”

15           170. Bosch entered into agreements with retailers, suppliers, and/or  
16 contractors to sell its Microwave/Ovens to be installed at Plaintiffs’ and Class  
17 Members’ homes.

18           171. Bosch provided Plaintiffs and Class Members with implied warranties that  
19 the Microwave/Ovens were merchantable and fit for the ordinary purposes for which  
20 they were used and sold and were not otherwise injurious to consumers.

21           172. However, the Microwave/Ovens are not fit for their ordinary purpose of  
22 providing reasonably reliable and safe heating of food because, *inter alia*, the Microwaves  
23 contain a defect preventing the Product’s Control Panel from illuminating properly,  
24 making the Panel unusable – and thus, the Product is unusable because consumer  
cannot ascertain which buttons on the Panel to press in order to select the correct  
cooking time. Therefore, the Microwave/Ovens are not fit for their particular purpose  
of safely heating and/or cooking food.

1           173. The problems associated with the Defect are safety risks such that the  
2 Microwave/Ovens do not provide safe reliable cooking appliances, and therefore, there  
3 is a breach of the implied warranty of merchantability.

4           174. Privity is not required because Plaintiffs and each of the members of the  
5 Class are the intended beneficiaries of Bosch's warranties and its sale through retailers.  
6 The retailers were not intended to be the ultimate consumers of the Microwave/Ovens  
7 and have no rights under the warranty agreements provided by Bosch. Bosch's  
8 warranties were designed for and intended to benefit the consumer only and Plaintiffs  
9 and Class Members were the intended beneficiaries of the Microwave/Ovens.

10           175. More specifically, Bosch's manifest intent that its warranties apply to  
11 Plaintiffs and consumer Class Members as third-party beneficiaries is evident from the  
12 statements contained in its product literature, including its Limited Product Warranty,  
13 which specifically states the Microwave/Ovens are to be used "[f]or your normal,  
14 household (non-commercial) use, and has in fact at all times only been used for normal  
15 household purposes." Likewise, it was reasonably foreseeable that Plaintiffs and  
16 consumer Class Members would be the intended beneficiary of the products and  
17 warranties.

18           176. Bosch impliedly warranted that the Microwave/Ovens were of  
19 merchantable quality and fit for such use. These implied warranties included, among  
20 other things: (i) a warranty that the Microwave/Ovens manufactured, supplied,  
21 distributed, and/or sold by Bosch were safe and reliable for heating food; and (ii) a  
22 warranty that the Microwave/Ovens would be fit for their intended use while operated.

23           177. Contrary to the applicable implied warranties, the Microwave/Ovens at  
24 the time of sale and thereafter, were not fit for their ordinary and intended purpose of  
providing Plaintiffs and Class Members with reliable, durable, and safe methods of  
heating food. Instead, the Microwave/Ovens suffer from a defective design and/or  
manufacture, as alleged herein.



1           178. Bosch's failure to adequately repair or replace the defective  
2 Microwave/Ovens has caused the warranty to fail of its essential purpose.

3           179. Bosch breached the implied warranties because the Microwave/Ovens  
4 were sold with the Defect, which substantially reduced and/or prevented the  
5 Microwave/Ovens from being used for safe food preparation.

6           180. Moreover, Bosch was put on constructive notice about its breach through  
7 its review of consumer complaints described herein, and, upon information and belief,  
8 through product testing.

9           181. Any efforts to limit the implied warranties in a manner that would exclude  
10 coverage of the Microwave/Ovens is unconscionable, and any such effort to disclaim,  
11 or otherwise limit, liability for the Microwave/Ovens is null and void.

12           182. As a direct and proximate result of the foregoing, Plaintiffs and the Class  
13 Members suffered, and continue to suffer, financial damage and injury, and are entitled  
14 to all damages, in addition to costs, interest and fees, including attorneys' fees, as  
15 allowed by law.

## **SECOND CLAIM FOR RELIEF**

### **Breach of Express Warranty (Plaintiffs Individually and on Behalf of the Nationwide Class)**

16  
17           183. Plaintiffs hereby adopt and incorporate by reference all foregoing  
18 allegations as though fully set forth herein.

19           184. At all times referenced herein, Bosch was the "seller" of the  
20 Microwave/Ovens.

21           185. At all times referenced herein, the Microwave/Ovens were "goods."

22           186. In connection with its sale of the Microwave/Ovens, Bosch expressly  
23 warranted that they were free from defect at the time of shipping and are suitable for  
24 heating food.



1           187. The defectively designed Microwave/Ovens are subject to and otherwise  
2 covered by Bosch's Limited Product Warranty, which applies to each Product.

3           188. Each of the Product models has an identical or substantially identical  
4 warranty.

5           189. Bosch was obligated, under the terms of the express warranty to  
6 adequately repair or replace the defective Microwave/Ovens for Plaintiffs and Class  
7 Members.

8           190. In its Limited Product Warranty, Bosch warrants "*that the Product is free from*  
9 *defect in materials and workmanship for a period of twelve (12) months from the date of purchase.*"

10          191. Bosch's warranty representations are made online, on its packaging,  
11 through its Use and Care Manual, and its Limited Product Warranty.

12          192. The express written warranties covering the Microwave/Ovens were a  
13 material part of the bargain between Bosch and consumers. At the time it made these  
14 express warranties, Bosch knew of the purpose for which the Microwave/Ovens were  
15 to be used.

16          193. Bosch breached the warranty because it improperly and unlawfully denies  
17 valid warranty claims, and it has failed or refused to adequately repair or replace the  
18 Microwave/Ovens with non-defective units.

19          194. Bosch further breached its express warranties by selling  
20 Microwave/Ovens that were, in actuality, not free of defect, not made from  
21 merchantable material and workmanship, unsafe for use, and could not be used for the  
22 ordinary purpose of heating food. Bosch breached its express written warranties to  
23 Plaintiffs and Class Members in that the Microwave/Ovens are defective at the time  
24 they leave the manufacturing plant, and on the first day of purchase, creating a serious  
safety risk to Plaintiffs and Class Members, and by failing to disclose and actively  
concealing this risk from consumers.

1           195. The limitations and the exclusions in Bosch's Warranty are harsh,  
2           oppressive, one-sided, unconscionable and unenforceable, as described *supra*,  
3           particularly in light of the fact that Bosch knew that the Microwave/Ovens suffered  
4           from the defect described herein.

5           196. Any attempt by Bosch to limit or disclaim the express warranty in a  
6           manner that would exclude coverage of the defect is unconscionable as a matter of law  
7           because the relevant purchase transactions were tainted by Bosch's concealment of  
8           material facts. Thus, any such effort to disclaim, or otherwise limit, its liability for the  
9           defect is null and void.

10          197. Privity is not required because Plaintiffs and each of the members of the  
11          Class are the intended beneficiaries of Bosch's warranties and its sale through retailers.  
12          The retailers were not intended to be the ultimate consumers of the Microwave/Ovens  
13          and have no rights under the warranty agreements provided by Bosch. Bosch's  
14          warranties were designed for and intended to benefit the consumer only and Plaintiffs  
15          and Class Members were the intended beneficiaries of the Microwave/Ovens.

16          198. More specifically, Bosch's manifest intent that its warranties apply to  
17          Plaintiffs and consumer Class Members as third-party beneficiaries, is evident from the  
18          statements contained in its product literature, including its Limited Product Warranty,  
19          which specifically states the Microwave/Ovens are to be used "[f]or your normal, household  
20          (non-commercial) use, and has in fact at all times only been used for normal household purposes."  
21          Likewise, it was reasonably foreseeable that Plaintiffs and consumer Class Members  
22          would be the intended beneficiary of the products and warranties.

23          199. Moreover, Bosch was put on constructive notice about its breach through  
24          its review of consumer complaints and media reports described herein, and, upon  
25          information and belief, through its product testing.

26          200. Upon information and belief, Bosch received further notice and has been  
27          on notice of the defective nature of the Microwave/Ovens and of its breaches of

1 warranties through customer warranty claims reporting problems with Bosch,  
2 consumer complaints at various sources, and its own internal and external testing.

3 201. Despite having notice and knowledge of the defective nature of the  
4 Microwave/Ovens, Bosch failed to provide any relief to Class Members with  
5 Microwave/Ovens more than one (1) year old, failed to provide a non-defective  
6 replacement Microwave/Ovens to Plaintiffs and Class Members, and otherwise failed  
7 to offer any appropriate repair or compensation from the resulting damages.

8 202. Bosch breached its express warranty to adequately repair or replace the  
9 Microwave/Ovens despite its knowledge of the Defect, and/or despite its knowledge  
10 of alternative designs, materials, and/or options for manufacturing the  
11 Microwave/Ovens.

12 203. To the extent that Bosch offered to replace the defective  
13 Microwave/Ovens, the warranty of replacement fails in its essential purpose given it is  
14 insufficient to make Plaintiffs and Class Members whole because the warranty covering  
15 the Microwave/Ovens gives Bosch the option to repair or replace the Product, where  
16 neither is sufficient. Specifically, in its course of business, Bosch often has opted to  
17 provide a replacement Product to complaining consumers; however, the replacement  
18 Product, and more specifically, the Control Panel, likewise contains the Defect,  
19 resulting in the same safety risks to the owners, and the same or similar damages can  
20 occur to the replacement Product and the owner's personal property. Accordingly,  
21 recovery by Plaintiffs and Class Members are not restricted to the promises in any  
22 written warranties, and they seek all remedies that may be allowed.

23 204. Many of the damages resulting from the defective Microwave/Ovens  
24 cannot be resolved through the limited remedy of replacement.

205. Accordingly, recovery by Plaintiffs and Class Members is not limited to  
the limited warranty of replacement, and they seek all remedies allowed by law.

1           206. Had Plaintiffs, Class Members, and the consuming public known that the  
2 Microwave/Ovens were defective, posed an unreasonable risk of harm to themselves  
3 and their property, would cause damage, or that Bosch would not properly honor its  
4 warranty, they would not have purchased the Microwave/Ovens.

5           207. Plaintiffs and Class Members have performed all duties required of them  
6 under the terms of the express warranty, except as may have been excused or prevented  
7 through the conduct of Bosch or by operation of law in light of Bosch's conduct  
8 described throughout this Complaint.

9           208. Bosch has received timely, direct and constructive notice regarding the  
10 problems at issue in this litigation, and notwithstanding, Bosch has failed and refused  
11 to offer an effective remedy.

12           209. As a direct and proximate result of Bosch's breach of its express written  
13 warranties, Plaintiffs and Class Members have suffered damages and did not receive the  
14 benefit of the bargain and are entitled to recover compensatory damages, including, but  
15 not limited to the cost of inspection, repair and diminution in value. Plaintiffs and Class  
16 Members suffered damages at the point of sale stemming from their overpayment for  
17 the defective Microwave/Ovens, in addition to loss of the Product and its intended  
18 benefits.

19                           **THIRD CLAIM FOR RELIEF**  
20                           **(IN THE ALTERNATIVE)**

21                           **Breach of Contract/Breach of Common Law Warranty**  
22                           **(Plaintiffs Individually and on Behalf of the Nationwide Class)**

23           210. Plaintiffs hereby adopt and incorporate by reference all foregoing  
24 allegations as though fully set forth herein.

          211. To the extent Bosch's commitment is deemed not to be a warranty under  
the Uniform Commercial Code or common law, Plaintiffs plead in the alternative under  
common law warranty and contract law.

1           212. Plaintiffs and Class Members purchased the Microwave/Ovens from  
2 Bosch or through retailers such as Best Buy, Home Depot, Lowe's, Amazon, and other  
3 appliance stores and authorized retailers.

4           213. Bosch expressly warranted that the Microwave/Ovens were fit for their  
5 intended purpose and that they were free of defects, suitable for safe heating of food.

6           214. Bosch made the foregoing express representations and warranties to all  
7 consumers, which became the basis of the bargain between Plaintiffs, Class Members,  
8 and Bosch.

9           215. Bosch breached the warranties and/or contract obligations by placing the  
10 defective Microwave/Ovens into the stream of commerce and selling them to  
11 consumers, when it knew the Microwave/Ovens contained Defect, were prone to  
12 premature failure, and did not safely heat food. These deficiencies substantially and/or  
13 completely impair the use and value of the Microwave/Ovens.

14           216. The deficiencies described existed when the Microwave/Ovens left  
15 Bosch's possession or control and were sold to Plaintiffs and Class Members. The  
16 deficiencies and impairment of the use and value of the Microwave/Ovens were not  
17 discoverable by Plaintiffs or Class Members at the time of the purchase of the  
18 Microwave/Ovens.

19           217. As a direct and proximate cause of Bosch's breach of contract, Plaintiffs  
20 and Class Members were harmed because they would not have purchased the  
21 Microwave/Ovens if they knew the truth about the defective condition of the  
22 Microwave/Ovens.  
23  
24

**FOURTH CLAIM FOR RELIEF**  
**(IN THE ALTERNATIVE)**

**Unjust Enrichment**  
**(Plaintiffs Individually and on Behalf of the Nationwide Class)**

218. Plaintiffs hereby adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

219. This alternative claim is asserted on behalf of Plaintiffs and Class Members to the extent there is any determination that any contracts between Class Members and Bosch do not govern the subject matter of the disputes with Bosch, or that Plaintiffs do not have standing to assert any contractual claims against Bosch.

220. Plaintiffs and Class Members conferred a monetary benefit on Bosch, and Bosch had knowledge of this benefit. The average price paid by Plaintiffs and Class Members for the Microwave/Ovens was more than \$2000.00, and the average price paid by Plaintiffs and Class Members for repair or replacement was approximately \$400.00.

221. By its wrongful acts and omissions described herein, including selling the defective Microwave/Ovens, Bosch was unjustly enriched at the expense of Plaintiffs and Class Members.

222. Plaintiffs' and Class Members' detriment and Bosch's enrichment were related to and flowed from the wrongful conduct alleged in this Complaint.

223. It would be inequitable for Bosch to retain the profits, benefits, and other compensation obtained from its wrongful conduct as described herein in connection with selling the defective Microwave/Ovens.

224. Plaintiffs and Class Members seek restitution from Bosch and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by Bosch from its wrongful conduct and establishing a constructive trust from which Plaintiffs and Class Members may seek restitution.

**FIFTH CLAIM FOR RELIEF**  
**FRAUDULENT CONCEALMENT**  
**(Plaintiffs Individually and on Behalf of the Nationwide Class)**

225. Plaintiffs hereby adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

226. Bosch knew or should have known that the Microwave/Ovens were defective in design and manufacture, were not fit for their ordinary and intended use, and failed to perform in accordance with advertisements, marketing materials and warranties disseminated by Bosch, and with the reasonable expectations of ordinary consumers.

227. Bosch fraudulently concealed from and/or intentionally failed to disclose to Plaintiffs and the Class that the Microwave/Ovens are defective, would prematurely fail, and that the damages were not the result of mishandling or installation errors.

228. Bosch had exclusive knowledge of the defective nature of the Microwave/Ovens at the time of sale and at all other relevant times. The Defect is latent and not something that Plaintiffs or Class Members, in the exercise of reasonable diligence, could have discovered independently prior to purchase.

229. Bosch had the capacity to, and did, deceive Plaintiffs and Class Members into believing that they were purchasing Microwave/Ovens or homes with Microwave/Ovens free from defects.

230. Bosch undertook active and ongoing steps to conceal the Defect. Plaintiffs are not aware of anything in Bosch's advertising, publicity, or marketing materials that disclosed the truth about the Defect, despite Bosch's awareness of the problem.

231. The facts concealed and/or not disclosed by Bosch to Plaintiffs and Class Members are material facts in that a reasonable person would have considered them



1 important in deciding whether to purchase (or to pay the same price for) the  
2 Microwave/Ovens.

3 232. Bosch intentionally concealed and/or failed to disclose material factors  
4 for the purpose of inducing Plaintiffs and the Class to act thereon.

5 233. Plaintiffs and the Class justifiably acted or relied upon the concealed  
6 and/or nondisclosed facts to their detriment, as evidenced by their purchase of the  
7 Microwave/Ovens.

8 234. Plaintiffs and Class Members suffered a loss of money in an amount to be  
9 proven at trial, *inter alia*, as a result of Bosch's fraudulent concealment and nondisclosure  
10 because: (a) they would not have purchased the Microwave/Ovens on the same terms  
11 if the true facts concerning the defective Microwave/Ovens had been known; (b) they  
12 would not have paid a price premium for the Microwave/Ovens if they knew of the  
13 Defect and that the Microwave/Ovens were likely to fail prematurely; and (c) the  
14 Microwave/Ovens did not perform as promised.

15 235. Had Plaintiffs, Class Members, and the consuming public known that the  
16 Microwave/Ovens were defective or would cause damage, they would not have  
17 purchased the Microwave/Ovens or would have paid less for them.

18 236. By reason of the foregoing, Plaintiffs and Class Members suffered, and  
19 continue to suffer damage and injury.

### 20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
22 situated, respectfully requests that this Court:

- 23 A. Certify the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- 24 B. Name Plaintiffs as Class Representative of the respective Class;
- C. Name Plaintiffs' counsel as Class Counsel for the Class;

- 1 D. Award damages, including compensatory, exemplary, and statutory damages, to  
2 Plaintiffs and the Class in an amount to be determined at trial;
- 3 E. Grant restitution to Plaintiffs and the Class and require Bosch to disgorge its ill-  
4 gotten gains;
- 5 F. Permanently enjoin Bosch from engaging in the wrongful and unlawful conduct  
6 alleged herein;
- 7 G. Award Plaintiffs and the Class their expenses and costs of suit, including  
8 reasonable attorneys' fees to the extent provided by law;
- 9 H. Award Plaintiffs and the Class pre-judgment and post-judgment interest at the  
10 highest legal rate to the extent provided by law; and
- 11 I. Award such further relief as the Court deems appropriate.

12 **JURY DEMAND**

13 Plaintiffs demand a trial by jury.

14 DATED: April 7, 2023

15 Respectfully submitted,

16 **MILBERG COLEMAN BRYSON**  
17 **PHILLIPS GROSSMAN PLLC**

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19 \*Motion to be admitted *pro hac vice*  
20 forthcoming.  
21  
22  
23  
24